Distr.
RESTRICTED

A/HRC/4/CRP.3
13 March 2007

ENGLISH ONLY

HUMAN RIGHTS COUNCIL
Fourth session
Item 2 of the provisional agenda

IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED "HUMAN RIGHTS COUNCIL"

Second session of the intersessional open-ended intergovernmental working group to develop the modalities of the universal periodic review mechanism established pursuant to Human Rights Council decision 1/103

SUMMARY OF THE DISCUSSION ON UNIVERSAL PERIODIC REVIEW PREPARED BY THE SECRETARIAT

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Introduction

1. By its resolution 60/251 of 15 March 2006, the General Assembly (GA) established the Human Rights Council (Council) and decided that it shall, inter alia, "undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States; the review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs; such a mechanism shall complement and not duplicate the work of treaty bodies; the Council shall develop the modalities and necessary time allocation of the universal periodic review mechanism within one year after the holding of its first session" (paragraph 5(e)).

2. At its first session held from 19 to 30 June 2006, the Council, by its decision 1/103 of 30 June 2006, decided to establish an intersessional open-ended intergovernmental working group (Working Group) to develop the modalities of the universal periodic review mechanism (UPR). The Council decided that the Working Group shall have at its disposal ten days (or twenty 3-hour meetings) of fully serviced meetings and that it shall allow sufficient time and flexibility for the development of the UPR mechanism. The Council also decided that informal consultations could begin immediately through an open-ended consultative process in order to compile proposals and relevant information and experiences, and to facilitate open-ended discussions appropriately scheduled by the Chairperson of the Working Group with the involvement of all stakeholders.

3. Pursuant to this decision, the President of the Council appointed the Permanent Representative of Morocco and Vice-President of the Council, Mr. Mohammed Loulichki, as Facilitator of the Working Group. Also pursuant to this decision, four rounds of open-ended intersessional informal consultations on UPR were held on 21 July, 2 August, and on 7 and 8 September 2006. At the first part of its second session held from 18 September to 6 October 2006, following the Facilitator's oral report on progress made since the convening of the above-mentioned informal consultations, the Council held a general debate on UPR.

4. The Working Group met in its first formal session from 20 to 23 November 2006. It held four meetings and concluded its work in a meeting convened by the President of the Council on 24 November 2006. The Working Group proceeded in accordance with a programme of work containing six elements for discussion previously announced by the Facilitator and on which all previous written and oral contributions had been submitted: i) The terms of reference/basis of review; ii) The objectives and guiding principles of review; iii) Periodicity and order of review; iv) The process and modalities of review; v) The outcome of the review; and vi) Follow-up to the review.

5. Further to the Working Group's discussions (summary prepared by the Secretariat contained in document A/HRC/3/CRP.1), the Facilitator prepared preliminary conclusions highlighting areas of emerging agreement as well as areas requiring further discussion on the above-mentioned six elements (document A/HRC/3/3). The preliminary conclusions were considered by the Council at its third session on 4 December 2006.

I. ORGANIZATION OF WORK

6. The Working Group met in its second session at the United Nations Office at Geneva from 12 to 15 February 2007. It held five meetings during the session and proceeded in accordance with the programme of work prepared by the Facilitator (see annex I).

7. The session was attended by representatives of States members of the Council, observer States of the Council, observers for non-member States of the United Nations and other observers, as well as observers for United Nations entities, specialized agencies and related organizations, intergovernmental organizations and other entities, national human rights institutions (NHRIs) and non-governmental organizations (NGOs).

8. The Working Group had before it a non-paper prepared by the Facilitator on the basis of his preliminary conclusions and on the discussions held to date. In his opening remarks, the Facilitator stated that the non-paper built upon the emerging elements of convergence previously identified in the above-mentioned preliminary conclusions, and outlined, wherever possible, compromise proposals as well as specific issues requiring further discussion and consideration. With reference to the three options on modalities annexed to the non-paper, the Facilitator noted that they were based on all such proposals previously put forward by all stakeholders and were intended to advance the discussions in the Working Group.

II. GENERAL OBSERVATIONS ON THE NON-PAPER

9. At its 1st and 2nd meetings, on 12 February 2007, the Working Group heard statements and general observations on the non-paper by the representatives of: Algeria (on behalf of the Group of African States); Argentina; Australia; Bangladesh; Brazil; Canada; China; Colombia; Cuba (on behalf of the Non-Aligned Movement); Ecuador; Germany (on behalf of the European Union); Guatemala; India; Indonesia; Iran (Islamic Republic of); Japan; Libyan Arab Jamahiriya; Malaysia; Mexico; Pakistan (on behalf of the Organization of the Islamic Conference); Philippines; Republic of Korea; Romania; Russian Federation; Senegal; South Africa; Switzerland; Thailand; Tunisia; Turkey; United Kingdom of Great Britain and Northern Ireland; United States of America; Uruguay; as well as the representative of Amnesty International. The views expressed will be reflected in the relevant chapters of the present summary.

10. The Facilitator's non-paper was generally acknowledged as an accurate reflection of discussions to date and as a good basis for future discussions. Delegations stated that GA resolution 60/251, in particular paragraph 5(e), should serve as the point of reference for the establishment of the UPR mechanism and accordingly, reaffirmed the elements contained therein. In this regard, statements were made highlighting, inter alia, the importance of universality and equal treatment, the cooperative nature of the mechanism, as well as the need to avoid selectivity, double-standards and politicization. Specific comments were also made on the other elements contained in the non-paper.

11. Delegations affirmed the importance of UPR as one of the central new elements of the Council. Views were expressed that the UPR mechanism should be established by consensus. Views were also expressed that the Working Group should focus on developing the general framework for UPR, while the mechanism could be reviewed, and if necessary adjusted, based on the experience gained following the first review cycles.

III. BASIS OF REVIEW

12. At its 2nd meeting, on 12 February 2007, the Working Group discussed the basis of review. Support was expressed for the elements of convergence listed in the non-paper, namely the United Nations Charter; the Universal Declaration of Human Rights; human rights instruments to which a State is party; and voluntary pledges and commitments made by States, including those undertaken when presenting candidatures for election to the Council. It was also stated, however, that the Working Group should not attempt to identify a prescriptive list of instruments or standards as GA resolution 60/251 provided the necessary basis and guidance in this regard.

13. With specific reference to paragraph 5(e) of that resolution, the view was expressed that UPR should not entail a second substantive assessment of compliance with treaty obligations as this would duplicate the work of the human rights treaty bodies. In this regard, it was proposed that UPR should instead examine the relationship between the State under review and the instruments to which it is party, including the status of ratification or accession; the status of reservations, if any, entered by the State to specific instruments, and any action undertaken to withdraw them; as well as any action undertaken to follow-up and implement the concluding observations of relevant treaty bodies. It was also expressed that obligations arising from treaties to which States are not party should be explicitly precluded from UPR since States were neither obligated to fulfil them nor had made commitments to do so.

14. Also with specific reference to paragraph 5(e), reservations were expressed on the inclusion of voluntary pledges and commitments as a basis of review as these may not apply equally to all States and thus, would not be consistent with the principles of universality of coverage and equal treatment of States. It was moreover stated that not all countries will stand for election to the Council in the future, thus pledges and commitments made in this regard would not apply to all. Mention was also made of the need to consider the context in which such pledges and commitments were made in order to identify clear criteria for evaluating their implementation and follow-up.

15. Different views were expressed on the Facilitator's compromise proposal to include obligations arising from international humanitarian law instruments (IHL) as a basis of review. It was stated that many aspects of IHL were relevant to human rights and reference was made to a 2003 advisory opinion of the International Court of Justice in this regard. It was therefore asserted that the Council should not be prevented from addressing IHL obligations, particularly in situations of armed conflict and foreign occupation. Others, referring specifically to paragraph 2 of GA resolution 60/251, argued that only human rights instruments were applicable to the work of the Council. It was also argued that the Council should not review States' compliance with IHL as it was not equipped to assess detailed and specific issues in this regard and as other bodies, namely the International Committee of the Red Cross, were mandated to do so. Suggestions were made to include a direct reference to the Geneva Conventions or to only include obligations arising from IHL instruments to which a State was party. Clarification was also requested on which IHL provisions were applicable and relevant to human rights.

16. At the 4th meeting, on 14 February, the Facilitator responded to the questions posed on the relevance and applicability of IHL to human rights. He noted that similarities between these two distinct branches of international law included the common objective to preserve life and human dignity in all circumstances and various core provisions, such as the right to life; the prohibition

against torture and other cruel or degrading treatment; and the prohibition against slavery. Differences highlighted included: the origins and development of these two branches of law, as well as the bodies established to monitor compliance; the scope of application (IHL applied to situations of armed conflict, while human rights law was applicable at all times); as well as the possibility of derogations (permitted under human rights law and not for IHL).

17. Reservations were expressed on the reference to commitments arising from United Nations conferences and summits (listed as an element requiring further consideration in the non-paper). It was noted that there were too many conferences and summits to include and that attempting to identify or achieve agreement on a list would be difficult. It was also noted that other United Nations bodies, such as the Economic and Social Council (ECOSOC), were already mandated to undertake follow-up to conferences and summits. Additionally, it was argued that the respective outcome documents or agreements did not achieve universal support in some cases and that such outcomes were mainly 'aspirational' in nature and thus could not constitute a basis of review.

18. It was pointed out that the reference to voluntary pledges and commitments was sufficiently broad to cover those emerging from United Nations conferences and summits. It was also proposed that specific references be made instead to the Vienna Declaration and Programme of Action adopted at the World Conference on Human Rights in 1993, the Durban Declaration and Programme of Action adopted at the World Conference against Racism in 2001, and/or the outcome to the World Summit in 2005.

19. Statements were made on the need to include in the non-paper other elements contained in the Facilitator's preliminary conclusions as additional bases of review, such as national constitutions, legislation and domestic laws; international customary law; and existing information, including the conclusions and recommendations of treaty bodies and special procedures. Other proposals were made to include references to national, religious and cultural specificities and level of development, as well as to the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

IV. THE PRINCIPLES AND OBJECTIVES OF REVIEW

20. Also at its 2nd meeting, the Working Group discussed the principles and objectives of UPR. Delegations reaffirmed the importance of a number of elements contained in paragraph 5(e) of GA resolution 60/251: cooperative mechanism; objective and reliable information for review; universality of coverage and equal treatment of States; full involvement of the country concerned; as well as complementarity and non-duplication with other human rights bodies.

21. General views were expressed that UPR should improve the implementation of human rights obligations, standards and commitments by all States. Elaborating on the need to consider the capacity-building needs of States under review, it was asserted that UPR should assist in identifying areas where technical assistance could be provided with the consent of the State concerned. Views were also expressed that UPR should promote genuine dialogue and international cooperation in the field of human rights.

i. Principles

22. Support was expressed for the elements of convergence listed as principles of review. Additionally, the importance of specific elements was underscored and there were proposals for modifications to the language contained in the non-paper. It was also suggested that UPR should draw upon the experiences of other review mechanisms, such as the African Peer Review Mechanism of the New Partnership for Africa's Development. It was further suggested that the section on principles and objectives would be better placed at the outset of the non-paper.

23. Referring to the promotion of the universality, interdependence, indivisibility, and interrelatedness of all human rights as an important principle of review, views were expressed that balance in the treatment of all human rights, including the right to development, should be specifically emphasized.

24. The need to establish a light, manageable and efficient review process was affirmed. Noting the potential resource and labour intensive nature of the mechanism, views were expressed that UPR would necessarily entail an additional burden to States, the Council and the Office of the High Commissioner for Human Rights (OHCHR). In this regard, it was asserted that this factor should not be used to justify non-cooperation by States. Accordingly, drafting suggestions were made to emphasize that UPR should not be 'overly' burdensome.

25. Delegations affirmed that UPR should be conducted in an objective, transparent, non-selective, constructive, non-confrontational and non-politicized manner. Drafting suggestions were also made to include a reference to impartiality and to incorporate the notion that UPR should avoid confrontation, politicization, double-standards and selectivity. Views were also expressed that UPR should not be a forum for 'naming and shaming' and for imposing country-specific resolutions or mandates.

26. Delegations also affirmed that UPR should be an intergovernmental process, one that is driven by Member States of the United Nations and not only of the Council. Accordingly, drafting suggestions were proposed to clarify the language contained in the non-paper.

27. On a related discussion, different views were expressed on the Facilitator's compromise proposal on ensuring the adequate participation of all relevant stakeholders. Further clarification was also sought on the types of stakeholders involved and on the exact scope and nature of their participation in the review process. Others noted, however, that the compromise proposal only envisaged the bare minimum of participation. In this regard, it was proposed that a reference be made to ensuring the effective contribution of stakeholders so as to be consistent with the language contained in paragraph 11 of GA resolution 60/251.

28. At the 4th meeting, on 14 February, the Facilitator provided clarification to questions asked on the participation of stakeholders. He noted that relevant stakeholders (although such a listing was not intended to be exhaustive) could include observer States of the Council, NGOs, NHRIs, other intergovernmental organizations, and United Nations entities, agencies, funds and programmes. He also noted that different modalities for participation could be established for different stages of the review process: preparatory; conduct of the review; decision-making; implementation and follow-up to outcomes, etc. Such issues were put to the Working Group for further discussion.

29. Different views were put forward in this regard. It was argued that only NGOs at the national level should contribute to the preparatory stage of the review process – more specifically, in the preparation of the State self-assessment report to be submitted to the Council. In this regard, it was stated that national-level NGOs would be best placed to provide information on a country under review. Additionally, it was considered that NGOs (in particular those with ECOSOC consultative status) and NHRIs should submit written information on a country under review but would only be present as observers in the interactive dialogue. It was noted that UPR was an intergovernmental, State-driven exercise (as stated in the non-paper).

30. Others, however, made reference to regional and international NGOs, with or without ECOSOC consultative status, United Nations agencies, funds, programmes and other entities, as well as representatives of treaty bodies and special procedures mandate-holders, and asserted that such stakeholders should participate in all stages of the review process, including in the interactive dialogue with the State concerned. It was also proposed that UPR should be open to the media, especially in the country concerned, and that the review should be broadcast live to ensure full transparency and the full participation of the country concerned.

31. In general, views were expressed that the modalities for the participation of all stakeholders should not be determined by the Council at a later stage, as in the compromise proposal in the Facilitator's non-paper, but discussed, developed and agreed upon by the Working Group as soon as possible.

32. Under elements requiring further consideration in the non-paper, different positions were held on the Facilitator's compromise proposal that UPR should, without prejudice to the elements provided for in the basis of review, take into account the level of development and specificities of countries. It was asserted that UPR should examine the constraints faced by a country in fulfilling its international obligations. It was noted that addressing the specific challenges faced by countries in different circumstances would ensure the provision of appropriate remedies or support. A suggestion was made to include this element as a basis of review. Suggestions were also made to include an explicit reference to cultural and religious specificities and backgrounds. It was argued, however, that if development levels and specificities were to be included as a principle of review, the extent to which such factors would be considered in different stages of the review process should be clarified and well-defined.

33. Referring to the need to ensure universality of coverage and equal treatment of States, other views were expressed that the same format and process of review, and in particular the basic standards underlying the review, should be applied equally to all States. Additionally, it was proposed that development levels and specificities should more appropriately be taken into account when assessing capacity-building needs and when developing outcomes and recommendations. It was also noted that States could highlight specificities or development constraints in their responses to the questionnaire. Accordingly, suggestions were made to modify the Facilitator's compromise proposal, in particular to utilize the language contained in paragraph 5 of the Vienna Declaration and preambular paragraph 4 of GA resolution 60/251.

ii. Objectives

34. Support was expressed for the objectives of the review as outlined in the non-paper. Comments and drafting proposals were also made on several specific elements. Concerning the

reference to the fulfilment of States' human rights obligations and commitments as an objective of review, it was noted that UPR was intended to be a cooperative mechanism and that States should be assisted in this regard. A suggestion was therefore made to modify the language contained in the non-paper accordingly. Further, it was noted that UPR should lead to an assessment of all developments and situations faced by the State and thus, the deletion of the word 'positive' was proposed.

35. It was emphasized that the enhancement of the State's capacity and technical assistance should only be achieved either upon request or in consultation with the State concerned. Accordingly, drafting changes were proposed to the language contained in the non-paper.

36. Support was expressed for the proposal that UPR should not diminish the Council's capacity to respond to urgent human rights situations. Suggestions were also made for it to be included as a principle of review. Others, however, held that UPR should not deal with urgent human rights situations. With reference to paragraph 10 of GA resolution 60/251, it was noted that the Council had special sessions and other means to do so. Suggestions were therefore made to delete this reference entirely.

37. Delegations affirmed that UPR should lead to the encouragement of full cooperation and engagement with the Council, other human rights bodies and OHCHR. A suggestion was made to add the words 'in a well-defined and clear manner'. Additionally, suggestions were also made to delete the reference to OHCHR as its relationship with UPR was yet to be defined.

V. PERIODICITY AND ORDER OF REVIEW

38. At its 3rd meeting, on 13 February 2007, the Working Group discussed the periodicity and order of review. Statements were made in support of the elements of convergence identified in the non-paper. Delegations affirmed that members of the Council would be reviewed during their term of membership and suggestions were made to retain the language of GA resolution 60/251, thus replacing "should" be reviewed by "shall" in the non-paper. Delegations also spoke in favour of the initial members of the Council to be reviewed first, especially those elected for one or two year terms.

39. The need for clear criteria in determining the order of review and for ensuring the predictability of the review process was emphasized. Also stressed was the need to respect equitable geographic distribution in the selection of countries for review as well as for having a mix of member and observer States of the Council. In this regard, a ratio of one-third members and two-thirds observers was specifically proposed for any given review cycle. Views were also expressed affirming that the order of review should reflect the principles of universality and equal treatment, while a suggestion was put forward to also take into account the specificities of countries. It was moreover argued that the same modalities for selection should be equally applied to both member and observer States.

40. Different views were expressed on the method to be used for determining the order of countries to be reviewed. Preferences expressed ranged from alphabetical order (in one of the official languages of the United Nations), drawing of lots, and volunteering (with the argument that such a sign of cooperation by a State should not be rejected). Random selection from among

regional groups was also proposed. It was asserted, however, that such options as drawing of lots or volunteering would not ensure predictability.

41. On the first element requiring further consideration, delegations reflected on the two options on periodicity proposed in the non-paper, with some indicating that they were open or flexible on the issue. In this regard, concerns were expressed over logistical difficulties in meeting the requirement that all Council members should be reviewed during their three-year term of membership (as stated in paragraph 9 of GA resolution 60/251). Those in favour of a five-year cycle maintained the need to provide sufficient time for the country concerned to both prepare for the review and implement the recommendations of the preceding review. Further, it was stated that longer cycles would allow UPR to focus on broader, systemic and institutional issues and would allow States to make any necessary adjustments to policies and programmes. A five-year cycle was also considered more realistic in terms of the workload and resource constraints of States, the Council and OHCHR. Those in favour of a four-year cycle stressed that a shorter cycle would allow for more effective and timely reviews, thus assisting States to identify capacity-building needs and allowing the Council to react more quickly in providing appropriate outcomes. This was seen as better suited to meet the objectives of the UPR. It was also noted that the recommendations emerging from UPR should be concrete and realistic, and thus, should be implementable within four years. Further, those who had previously expressed a preference for a three-year cycle indicated that they could accept the compromise proposal of four years.

42. The second element requiring further consideration, different periodicities for developed and developing countries, was also discussed. Delegations pointed to the need to take into account national capacities and potential difficulties, particularly in the case of the least developed countries, in preparing for the review and in meeting UPR obligations. Others made reference to the principles of universality and equal treatment set out in paragraph 5(e) of GA resolution 60/251 and considered that the periodicity of review should be the same for all countries. It was also pointed out that development levels and specificities would be taken into account during the actual review and that the outcomes and recommendations would be tailored to address specific capacities and meet specific needs.

43. Finally, a proposal was made to establish more frequent review cycles (as a means of follow-up) for countries facing particular challenges. Additionally, it was proposed that a mechanism be established to allow States to report or make available information on progress made prior to their next scheduled review.

VI. THE PROCESS AND MODALITIES OF REVIEW

44. Also at its 3rd meeting, the Working Group considered the process and modalities of review. The discussion in this chapter is necessarily linked with that held by the Working Group on the three options on modalities annexed to the non-paper (at the 5th meeting, on 15 February 2007). When relevant, views expressed in that discussion will therefore be reflected in the present chapter (see also chapter IX – options on modalities).

45. The Facilitator emphasized the specific elements requiring further consideration listed in the non-paper, namely the use of a standardized versus an individualized questionnaire, the conduct of UPR in plenary or in working groups, and the involvement of experts in the process.

46. Delegations affirmed that the review should be conducted on the basis of a self-assessment report by the State concerned, with suggestions put forward that the State should be permitted to submit additional information if so wished and that the self-assessment should be distributed at least four weeks prior to the scheduled review and made available on the extranet page of the Council. It was also asserted that States should not merely be encouraged but expected to prepare the report through a broad consultation process at the national level - with modifications proposed to the language contained in the non-paper accordingly. A question was raised, however, as to whether this would still ensure a light review process. Others were also of the view that the preparation of the report should be left to the State concerned.

47. Alternatively, it was asserted that the self-assessment report should not constitute the sole means of evaluating States and that no new reporting obligation should be created. In this regard, it was proposed that the self-assessment report should be made optional. It was also argued that UPR should not be tied to a reporting cycle, particularly if (as experienced in the treaty body system) there would be backlogs or delays that could paralyse the mechanism. A view was furthermore expressed that self-assessment should not necessarily be referred to as a report, but rather as a base document (prepared on the basis of a standard questionnaire highlighting human rights priorities and shortcomings) or simply as information. It was moreover noted that the State concerned should provide information that is not already reflected in the Common Core Document of the treaty body system.

48. While support was expressed for the proposed compilation of information by OHCHR, it was stated that no analysis or interpretation of the information should be made by OHCHR. It was also stressed that only the recommendations of thematic special procedures should be included, and that this should not duplicate the work of treaty bodies. Additionally, it was suggested that the compilation should also include any comments or responses provided by the State (to the concluding observations of treaty bodies or to the recommendations of special procedures), any voluntary reflections provided by the State, and/or information from NGOs (either with or without ECOSOC consultative status) and NHRIs. A view was expressed that the compilation could be made available electronically on the internet. In this connection, reference was also made to the country pages on OHCHR's website as well as to the new universal human rights index. A view was also expressed that both the self-assessment report and the information compiled by OHCHR could be merged into a country file. On the other hand, it was also argued that the information contained in treaty body reports and other official United Nations documents could simply be referred to by the State and thus, there was no merit in such a compilation.

49. Support was expressed for the Facilitator's compromise proposal on the additional information for review as stated in the non-paper. Emphasizing the important role of other stakeholders in the review process, drafting changes were proposed in order to guarantee that such information would be taken into account. However, as in a related discussion on the principles of review (see paras. 27 to 30 above), delegations questioned the types of stakeholders involved and highlighted the need to ensure the objectivity and reliability of the information provided. A view was moreover expressed that only information provided by the State should be considered in the review.

50. Support was expressed for the other elements of convergence listed in the non-paper, such as the conduct of an interactive dialogue between the country under review and the Council, and the adoption of the final outcome in plenary session. It was noted that an effective UPR would

necessarily require time and resources; thus, the deletion of the relevant reference in the non-paper was proposed.

51. Under elements requiring further consideration, different preferences were expressed on the type of questionnaire to be used in the review process, either exclusively standardized (for which a suggestion was made that it should be designed to identify areas of cooperation with the State); or individualized, or a hybrid containing standardized and individualized elements. It was also proposed that a standardized questionnaire be utilized as the basis for the State self-assessment report, while an individualized questionnaire or a list of issues be utilized for the interactive dialogue. The main argument raised in support of a standardized questionnaire was the need to ensure equality of treatment of all States. It was also argued, however, that an individualized questionnaire would ensure that development levels and specificities of countries would be appropriately taken into account. Alternatively, it was proposed that general guidelines for the self-assessment report should be developed and utilized instead of the questionnaire.

52. Different views were expressed on whether the review should be conducted by the Council plenary or in one or several working groups, and it was suggested that a detailed discussion be held on the possible relationship between such working groups and the Council (see also paras. 79 to 81). Different views were also expressed on whether the review should be conducted inter-sessionally or during the Council's regular sessions (see also para. 82). It was argued that a review in the Council plenary would ensure transparency, universality and equal treatment in the process, particularly through the participation of all States in the review of other States. Highlighting the additional burden, particularly on smaller delegations, and resource requirements of working group meetings, particularly if held in parallel, it was argued that a plenary review would be more manageable, efficient, simple and less burdensome. On the other hand, it was considered that a review in working groups would impose a more manageable workload on delegations and would be less burdensome and more efficient. The additional meetings required for a review in plenary was noted in this regard. It was also asserted that a three-hour interactive dialogue in plenary would allow limited time for the State under review to respond appropriately and to provide the information requested. It was therefore argued that working groups would allow for more focused, detailed and less-politicized discussions, in particular regarding technical cooperation and capacity-building, thus facilitating the adoption of recommendations by the Council plenary.

53. Under elements requiring further consideration, clarification was sought on the holding of a prior review by the regional group or a group of friends of the country under review. While support for such a proposal was expressed, it was also argued that a prior review would be overly burdensome and would not apply equally to all groups. It was further noted that UPR was intended to be universal and not regional in nature.

54. Also discussed was the possible involvement of an expert, panel of experts or country rapporteurs in the review (see also para. 83). It was argued that the involvement of experts would be contrary to the peer review and intergovernmental character of UPR. The specific involvement of country rapporteurs was cited as contrary to the cooperative nature of UPR. It was also argued that the issue of country rapporteurs was still in discussion and there was currently no decision on the matter. On the other hand, while views differed as to whether such experts would be representatives of States or independent, delegations pointed to the need for a filtering mechanism in the process, especially in the preparatory phase, to analyze and provide a

synopsis of possibly voluminous country information, highlight key issues to be raised in the dialogue, and/or prepare an individualized questionnaire or a list of issues (following the model of the treaty bodies). It was also noted that the involvement of experts could facilitate the work of States and reduce the preparation burden on delegations, particularly smaller ones, as well as ensure uniformity and equal treatment, particularly with regard to country information. Additionally, it was argued that experts could assist in drafting recommendations and conclusions. Those in favour of the involvement of independent experts highlighted the potential difficulties faced by States in reviewing other States, particularly in being expected to produce a list of issues or draft recommendations. Finally, it was argued that the involvement of independent experts would assist in reducing or avoiding politicization in the review process.

55. Other proposals put forward included the formation of a troika of countries, the selection of a "discussant" to assume a leadership role in the preparation of the review and in the conduct of the dialogue, or the designation of a rapporteur from among Council members to draft conclusions and recommendations.

VII. OUTCOME OF THE REVIEW

56. At its 4th meeting, on 14 February 2007, the Working Group considered the outcome of the review, which is divided into three sub-headings in the Facilitator's non-paper, namely, format, content, and mode of adoption.

57. The Facilitator noted that the non-paper listed three possible options on the format of the outcome. Support was expressed for either the first two options or for a combination of both, namely that the outcome of UPR should be in the form of a report containing decisions and/or recommendations and/or conclusions (first option), and that it should include a summary of the proceedings (second option). While it was asserted that UPR outcomes should not contain any decisions, others indicated that any decisions should be adopted by consensus and/or with the consent of the country under review. It was also asserted that UPR should not necessarily lead to recommendations or conclusions for all countries reviewed. In this regard, it was proposed that an outcome report containing a summary of the proceedings be acted upon (taken note in a statement) by the Council during its sessions once or twice a year. Further clarification was sought on the content and significance of the proposed statement of the Council (third option).

58. Other proposals on possible UPR outcomes included a process verbale, containing a summary of the proceedings with recommendations to be adopted by consensus, and a compilation (into one document) of the questionnaire, State response, summary of proceedings, conclusions and recommendations.

59. In relation to the content of the outcome, general views were expressed that the recommendations of UPR should be adapted to the specific situation, action-oriented and realistic, as well as operationally and practically useful. It was also asserted that recommendations should be made with the full involvement and/or consent of the country concerned. While support was expressed for the elements of convergence listed in the non-paper, views were also expressed that any outcome emerging from UPR should also address or strengthen cooperation with the human rights machinery, take into account the development level and specificities of the country, as well as address follow-up of previous recommendations.

Drafting changes were accordingly proposed on a number of related elements listed in the non-paper.

60. Further, it was asserted that UPR outcomes should highlight the capacity-building needs of States and focus on areas where technical assistance could be provided with the consent of the State concerned or at its request. It was also proposed that technical assistance and capacity-building should be provided without prejudice to existing assistance, in consultation with other United Nations entities, and that it should be financed from the regular budget of OHCHR. Alternatively, it was suggested that UPR should only result in the identification of technical assistance and capacity-building needs for consideration by relevant actors.

61. The related question of whether to use existing financing mechanisms or to establish a dedicated fund for technical cooperation and capacity-building in the context of UPR was discussed. It was noted that the implementation of UPR outcomes may be impeded by lack of capacity, particularly in developing countries. The new fund would therefore promote cooperation among States in this regard. Alternatively, it was stated that existing mechanisms, such as the Voluntary Fund for Technical Cooperation, should be explored and utilized, and that it was more a lack of financial contributions to the existing mechanisms. It was also pointed out that funding issues should be left to the GA Fifth Committee. Additionally, it was proposed that this issue should be moved to the follow-up section of the Facilitator's non-paper.

62. The Facilitator clarified that the elements requiring further consideration listed in the non-paper were not necessarily exhaustive. While support was expressed for these elements, concerns were also raised about their inclusion as possible UPR outcomes, and suggestions were made for their deletion from the non-paper. It was stated that all possible options on outcomes should be left open and that it was not appropriate to develop a prescriptive list at this stage. It was specifically noted that measures, such as the possible establishment of a special procedure mandate or the dispatching of fact-finding missions, investigative teams or commissions of inquiry would lead to politicization and selectivity if not applied equally to all States, or be overly burdensome for the Council and for States if applied to all. With regard to the establishment of OHCHR field offices or other forms of field presence, it was stated that OHCHR's link with UPR was yet to be defined and that this may undermine its independence and autonomy. It was also stated that such a measure should only take place with the consent of the State concerned. With regard to whether UPR should provide an assessment of the implementation of treaty body and special procedure recommendations and conclusions, concerns were expressed about possible duplication of the work of such mechanisms.

63. In relation to the mode of adoption, support was expressed for the first and third elements of convergence in the non-paper, namely, that the outcome of the review should be adopted by the plenary and that before the adoption of the outcome, the State concerned should be offered the possibility to present replies to questions or issues that were not sufficiently addressed during the interactive dialogue. In this regard, it was specifically asserted that only member and observer States of the Council should be involved in the decision-making process. Those in support of review by working groups noted that a draft outcome would be submitted to the plenary for consideration and adoption but should not be subject to further negotiation. A question was also raised as to the actual process by which the first draft outcome would be prepared and whether this would lead to a situation in which multiple draft outcomes with competing recommendations would be submitted by different delegations to be considered and acted upon by the Council.

64. While support was expressed for the full involvement of the reviewed country in the outcome, different views were also put forward on the extent of such involvement. It was specifically asserted that the reviewed country should submit comments on the draft summary or recommendations, prior to it being made public, but not decide on the actual outcome. Additionally, it was proposed that the reviewed country should merely be informed rather than involved in the outcome.

65. Delegations affirmed that the outcome should be published and widely disseminated. In this regard, it was specifically proposed that UPR outcomes should be published electronically and made available on OHCHR's website. Clarification was sought, however, as to whether the formulation was understood to mean publication on the same basis as other documents of the Council and distribution at the national level.

66. Under elements requiring further consideration, the Facilitator stated that his compromise proposal that the decision-making for UPR outcomes should be the same as for other decisions of the Council should be moved to the elements of convergence. He explained that his compromise proposal was not specific to UPR, and that UPR should follow the standard decision-making processes of the Council. Delegations asserted that decision-making for UPR should be by consensus, with the full involvement and/or consent of the country concerned. Others, however, stated that while consensus was preferable, the possibility of adoption by vote should not be excluded, particularly to ensure the credibility and effectiveness of the mechanism. It was further noted that the country reviewed should have the opportunity to submit a supplemental document to record any comments or objections.

VIII. FOLLOW-UP TO THE REVIEW

67. Also at its 4th meeting, the Working Group discussed the follow-up to the review. While statements were made in support of the elements of convergence listed in the non-paper, different views and drafting suggestions were also put forward on specific elements. The primary responsibility of the State reviewed in implementing and following-up UPR outcomes was affirmed. In this regard, drafting suggestions put forward included combining the first and fourth elements on the implementation of the UPR outcome by the State concerned and with all relevant stakeholders; deleting the reference to the State and relevant stakeholders in the first element as this was deemed to be repetitive in view of the fourth element; and including a specific reference to all national stakeholders only.

68. While it was affirmed that the subsequent review should focus, inter alia, on the implementation of the preceding outcome, suggestions were also made to include a reference to OHCHR and other relevant United Nations entities as implementation partners, and to replace 'focus' with 'include' so that the subsequent review may address issues other than implementation. Further, while it was affirmed that the Council should have a standing agenda item on UPR, other views put forward specifically asserted that UPR should only be considered by the Council once or twice a year.

69. Different views were expressed on the proposal that the international community should discharge its responsibility in implementing UPR recommendations and conclusions regarding capacity-building and technical assistance. The addition of a reference to the allocation of resources was proposed. Additionally, it was stated that this should be provided upon the request

and/or with the consent of the State concerned. It was also noted that this did not constitute a legal obligation and that it should not be limited to technical assistance and capacity-building. Suggestions were therefore made to modify the language accordingly.

70. Different views were also expressed in relation to the elements requiring further consideration with suggestions were made to delete all elements entirely. General views were moreover expressed that UPR outcomes should be 'tailor-made' and specific to each country, thus, such issues should remain open and not be prescriptive at the outset.

71. Concerning the proposal that the State reviewed should report to the Council on the implementation of UPR outcomes, the need to establish criteria for assessing implementation and to involve other actors, such as special procedures, NGOs and NHRIs in follow-up was highlighted. A suggestion was also made to replace 'should' with 'could' as UPR should result in 'tailor-made' and specific outcomes for each country. Views were expressed that reporting on implementation should only take place at the subsequent review and it was stated that intermediate reporting between reviews was not advisable. Others, however, noted that some form of intermediate follow-up mechanism should be envisaged, particularly if longer periodicities were established. In this regard, a specific proposal was made for the country concerned to inform the Council on how it intends to implement recommendations within six months after the adoption of the outcome, which would form the basis for the subsequent review.

72. Support was expressed for the reference to other actors, such as treaty bodies, special procedures, the expert body, NGOs or NHRIs, in implementation of UPR outcomes. Others, however, expressed reservations, noting that States should have the primary responsibility for implementation and that there was no specific mandate to involve civil society in follow-up. It was furthermore stated that treaty bodies should not be tasked with UPR follow-up.

73. Reservations were expressed about the possible nomination of a rapporteur to ensure follow-up. It was argued that this would entail additional resources and that there may be difficulties in agreeing upon the mandates of such rapporteurs. It was also noted that States and the Council should be responsible for ensuring follow-up. Concerns were expressed about how equal treatment of all States would be ensured if rapporteurs were not appointed for all reviewed.

74. Different positions were held on the possible consolidation of UPR reports into a global report at the end of every cycle and after all countries have been reviewed. It was argued that this was a natural consequence of the review process and that the outcomes should be published and widely disseminated. The added value and necessity of such a proposal was questioned, particularly if the information contained in such reports would be quickly out of date. It was suggested that UPR reports should instead be posted on OHCHR's website and transmitted to relevant United Nations bodies and entities.

75. Reservations were expressed with regard to possible measures to be taken in case of non-compliance with the UPR outcome (or non-cooperation with the UPR mechanism in general). It was emphasized that the UPR should be a cooperative mechanism, with emphasis on strengthening national capacities, and that any measures taken should be aimed at engaging in a constructive dialogue. Others, however, asserted that such measures were necessary and proposals made in this regard, included the possible scheduling of review at an earlier stage, or a President's or Council statement referring to non-cooperation by the country concerned.

IX. OPTIONS ON MODALITIES

76. At its 5th meeting, on 15 February 2007, the Working Group discussed the three options on UPR modalities annexed to the non-paper. Following a presentation on all options by the Facilitator, delegations were requested to focus their interventions on the possible involvement of experts in the review process. The discussion in this chapter is necessarily linked with that held by the Working Group on the process and modalities of review (at the 3rd meeting, on 13 February 2007). When relevant, views expressed in that discussions will therefore be reflected in the present chapter (see also chapter VI – process and modalities of review).

77. With regard to option one, the Facilitator noted that two questions should be addressed by the Working Group: information management – how all the required information could be brought together and channelled to the Council plenary for consideration and immediate action; and time management – whether the required meetings would fall within the 10 weeks of regular sessions or whether additional time should be allocated.

78. The Facilitator noted that options two and three introduced an intermediary stage, assumed by either four working groups (option two) or two working groups (option three), between the collection of information and the consideration by the Council plenary. Members of the working groups could be representatives of States, independent experts or a mixture of both. Two options on the work of the working groups were proposed: either a specific questionnaire with the response by the State under review, or a report of the review with response and commentary by the State concerned.

79. There were diverging views expressed on each and all options presented. Those in favour of option one reiterated that a plenary review ensured transparency, universality, equal treatment and the participation of all States, particularly small delegations, in the review process. It was also argued that this option would be more manageable, efficient and less burdensome, particularly in view of the additional meetings and resources required by several working groups (as proposed in options two and three). It was noted, however, that this option did not include any preparatory stage and that there was limited time and possibility for dialogue with the State under review. In this regard, it was argued that the lack of preparatory stage could result in inaccurate or outdated information finding its way into the OHCHR compilation - with the dialogue consequently devoted to correcting such inaccuracies as opposed to addressing substantive issues. This could be overcome if the OHCHR compilation contained information from a limited number of sources. In response, a view was expressed that the preparatory stage could be achieved through the questionnaire and the consultation process to be undertaken for the preparation of the State self-assessment report (see also para. 52).

80. Those expressing preference for either options two or three highlighted the importance of an intermediary stage in the review process. In their view, these options presented the most efficient and manageable process. Further, working groups were argued to provide an opportunity for more focused, detailed and less-politicized discussions with the State concerned, thus facilitating the preparation and adoption of outcomes and recommendations by the Council plenary. Responding to the concerns raised about universality and equal treatment, it was argued that working groups could ensure that equal attention was paid to each country, whether great or small. Also responding to the concerns raised about lack of transparency and participation, it was proposed that such working group meetings should be open-ended and not held in parallel. It was

also proposed that such working groups should have flexible working methods to allow interactivity between them (see also para. 52). Finally, views were expressed that such working groups would prepare a draft report of the review containing concrete recommendations and any comments by the State concerned for adoption by the plenary.

81. Other proposals were also put forward, including the establishment of one small working group composed of Government representatives; and the establishment of one open-ended working group composed of Government representatives, particularly in the first review cycles.

82. Views also differed as to whether the review would be conducted sessionally or in the inter-sessional period. It was specifically suggested that any preparatory stage could take place inter-sessionally, while the review should be conducted sessionally. Views also differed as to whether the plenary meeting time required for UPR would take place within the 10 weeks of the Council's regular sessions or whether additional time should be allocated. In this regard, different positions were held on whether UPR, if taken up within the 10 weeks allocated to the Council, would overly reduce the time still available for it to address substantive issues.

83. A specific discussion was held on the possible involvement of experts in the review process with statements made emphasizing the need to find the appropriate balance between State involvement and expert input (see also para. 54). In this regard, it was specifically proposed that experts should only be involved at the national-level in the preparation of the State self-assessment report. As a compromise, it was proposed that States could designate and appoint as members of delegations either representatives of Government, experts or civil society actors. With specific regard to options two and three, compromise proposals put forward included allowing States to designate their own working group members (either Government representatives or independent experts) and the possible hybrid composition of working groups.

84. As in previous discussions, different views were expressed with regard to the participation of other stakeholders (NGOs, NHRIs, special procedures, treaty bodies and United Nations entities) in various stages of the review process (see also paras. 29 to 30, and 49), periodicity (see also chapter V), and the documents on which review would be based (see also paras. 46 to 49, 51).

X. CLOSURE OF THE SESSION

85. The Facilitator highlighted that there seemed to be convergence on several elements in the non-paper although some reformulation would perhaps be necessary. Further discussions were required, however, on some critical structural elements for the consensual establishment of a manageable and credible mechanism: review by the Council plenary or in working groups; the involvement of experts and other stakeholders in the review process; implementation of UPR outcomes; and decision-making for UPR. The Facilitator highlighted that such issues would be the focus of future discussions. He also emphasized the need to focus on the foundations of UPR and not its details. In this regard, he noted that UPR was to be an ongoing mechanism, which could be reviewed in five years (coinciding perhaps with one review cycle and in accordance with the review of the Council by the GA as stated in its resolution 60/251). The experience gained and the practice of UPR should allow for all details to be developed and fine-tuned.

86. The Working Group thus concluded its second session.

Annex I

Proposed programme of work for the Working Group to develop the modalities of the universal periodic review mechanism (UPR)

(12 to 16 February 2007)

Prepared by the Facilitator, H.E. Mr. Mohammed Loulichki (Morocco)

Proposed programme of work:

Monday, 12 February 2007 (10.00 am to 1.00 pm)

- Presentation by the Facilitator of the non-paper;
- General comments on the non-paper.

Monday, 12 February 2007 (3.00 pm to 6.00 pm)

- Focused discussion, mainly on the elements requiring further consideration on:

  i. Basis of review;
  ii. Principles and objectives of the review.

Tuesday, 13 February 2007 (3.00 pm to 6.00 pm)

Focused discussion, mainly on the elements requiring further consideration on:

i. Periodicity and order of review;
ii. Process and modalities of review.

Wednesday, 14 February 2007 (10.00 am to 1.00 pm)

- Focused discussion, mainly on the elements requiring further consideration on:

  i. Outcome of the review;
  ii. Follow-up to the review.

Thursday, 15 February 2007 (10.00 am to 1.00 pm)

- Focused discussion on the three options annexed to the non-paper.

Friday, 16 February 2007 (3.00 pm to 6.00 pm) [Meeting cancelled]

- Final remarks by delegations;
- Concluding remarks by the Facilitator.

Annex II

Timetable for the Working Groups of the Council
5 to 16 February 2007

	Morning	Afternoon
Monday, 5 February	Complaint Procedure	Complaint Procedure
Tuesday, 6 February	Review of Mandates	Review of Mandates
Wednesday, 7 February	Review of Mandates	Review of Mandates
Thursday, 8 February	Complaint Procedure	Expert Advice
Friday, 9 February	Expert Advice	Expert Advice

	Morning	Afternoon
Monday, 12 February	Universal Periodic Review	Universal Periodic Review
Tuesday, 13 February	Universal Periodic Review	Review of Mandates
Wednesday, 14 February	Universal Periodic Review	Complaint Procedure
Thursday, 15 February	Universal Periodic Review	Review of Mandates
Friday, 16 February	Expert Advice	----------